

AN ACT

relating to energy facility siting; amending title 61, idaho code, by the addition of a new chapter 16, title 61, idaho code, to provide legislative intent, to define terms, to create an energy facility site evaluation council and to provide membership, to provide powers of the energy facility site evaluation council, to provide energy facilities to which the act applies, to provide prior notice of applicant intent, to provide fees to be submitted with applications and to provide procedures, to provide for expedited processing of applications, to provide for appointment of a counsel for the environment, to provide for public hearings, to provide factors to be considered in evaluating applications, to provide for reports to the governor and the legislature, to provide for approval or rejection of certification, to provide for preemption, to provide the effect of certification, to provide for revocation or suspension of certification and to provide grounds, to provide for judicial review, to provide for enforcement of compliance and to provide penalties, to provide for availability of information, to provide for study of potential sites and a fee for such study, to provide for city and county requests and to provide for disposition of receipts from applicants; providing severability; and declaring an emergency.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 0.. That Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 16, Title 61, Idaho Code, and to read as follows:

CHAPTER 16

ENERGY FACILITY SITING

61-1601. Legislative findings -- Policy -- Intent. The legislature finds that the construction of energy facilities in the state of Idaho requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Idaho to recognize the significant impact of energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on its people, the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will balance the demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Idaho state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection;

(2) To preserve and protect the quality of the environment; to enhance the public's

opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness and to minimize or mitigate greenhouse gas emissions; and to pursue beneficial changes in the environment;

(3) To provide energy at reasonable cost;

(4) To ease costs of complete site restoration and demolition of improvements and infrastructure at unfinished energy sites, and to use unfinished energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

61-1602. Definitions. As used in this chapter:

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages in excess of two hundred thousand (200,000) volts to connect a thermal power plant to the northwest power grid; provided, that common carrier railroads or motor vehicles shall not be included.

(4) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to section 61-1604, Idaho Code, as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(5) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars (\$250,000).

(6) "Council" means the energy facility site evaluation council created by section 61-1603, Idaho Code.

(7) "Counsel for the environment" means a deputy attorney general who shall represent the public in accordance with section 61-1609, Idaho Code.

(8) "Energy facility" means an energy plant or transmission facilities, provided that facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes are excluded from the provisions of this chapter.

(9) "Energy plant" means the following facilities together with their associated facilities:

(a) Any thermal power plant with generating capacity of one hundred megawatts (100MW) or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, including associated facilities;

(b) Any alternative energy generation plant with generating capacity of twenty-five

megawatts (25MW) or more. As used in this subsection "alternative energy generation plant" means equipment that: is capable of producing electricity from biomass, waste, renewable resources including, but not limited to, solar, wind, low-impact hydro and pumped storage, geothermal resources, or any combination thereof; and does not receive more than twenty-five percent (25%) of its total annual energy input from oil, propane, natural gas or coal that may be used only for ignition, start-up, testing, flame stabilization or to prevent outages. "Low-impact hydro" means an electric generating plant utilizing water for the generation of electricity, housed in an existing canal or existing reservoir.

(10) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(11) "Land use plan" means a comprehensive plan or part thereof adopted by a unit of local government pursuant to chapter 65, title 67, Idaho Code.

(12) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(13) "Site" means any proposed or approved location of an energy facility.

(14) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities.

(15) "Transmission facility" means an electric transmission line and associated facilities with a design in excess of two hundred thirty (230) kilovolts.

(16) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 65, title 67, Idaho Code.

61-1603. Energy facility site evaluation council -- Created -- Membership -- Support. (1) There is created and established the energy facility site evaluation council which shall not be deemed a department for purposes of section 20, article IV of the constitution of the state of Idaho.

(2) (a) The chairman of the council shall be elected from the members enumerated in subsection (3) of this section, shall have a vote on matters before the council, and is removable for cause by a majority vote of other members of the council. The chairman may designate a member of the council to serve as acting chairman in the event of the chairman's absence. The chairman is a "state employee" for the purposes of the ethics in government act. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with section 59-509(h), Idaho Code.

(b) The chairman or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Idaho state department of environmental quality shall provide all administrative and staff support for the council. The director or president of the departments or commission listed in subsection (3) of this section shall employ such personnel as are necessary to implement this chapter and shall provide staff support to the council.

(3) Both members of the northwest power and conservation council representing Idaho shall be members of the council. The council shall also consist of one (1) person each from each agency, department or commission which shall be the president, the director, administrator, or

their designees, of the following departments, agencies or commissions or their statutory successors:

- (a) Department of environmental quality;
- (b) Department of fish and game;
- (c) Department of health and welfare;
- (d) Department of commerce and labor;
- (e) President of the public utilities commission;
- (f) Department of water resources.

(4) The appropriate board of county commissioners of every county where an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city council of every city within whose corporate limits an energy facility is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) The appropriate board of county commissioners of every county that the council deems to be potentially affected by an application which is filed for a proposed site, or in which a facility is proposed to be located, shall appoint a member or designee of each such county as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(7) The city council of every city that the council deems to be potentially affected by a proposed energy facility shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(8) A quorum of the council is necessary to conduct business. All actions of the council shall be by a majority vote.

61-1604. Energy facility site evaluation council -- Powers enumerated. The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules pursuant to chapter 52, title 67, Idaho Code, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice and procedure for the conduct of public hearings pursuant to the provisions of the administrative procedure act, as found in chapter 52, title 67, Idaho Code;

(4) To prescribe the form, content, and necessary supporting documentation for site

certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor and the legislature which shall include:

(a) An annual review of applications, their status if pending, and the council's findings on each completed application;

(b) Criteria specific to the site and transmission line routing;

(c) A council decision as to the disposition of the application; and

(d) A draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to subsection (12) of this section; provided, that any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement; provided further, that the council shall retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of state and federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Idaho;

(12) To issue final approval of permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the federal clean air act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities; provided, that such permits shall become effective only if the council approves an application for certification and executes a certification agreement pursuant to this chapter; and provided further, that all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter. Site approval shall be conditioned on issuance of proper permits.

61-1605. Energy facilities to which chapter for application applies -- Forms information.

(1) The provisions of this chapter shall apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in section 61-1602, Idaho Code. No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after the effective date of this chapter, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in section 61-1602, Idaho Code.

(3) Applications for certification of energy facilities made prior to the effective date of

this chapter, shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding the effective date of this chapter, which shall apply to such prior applications and to site certifications prospectively from the effective date of this chapter.

(4) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. Included in the application shall be information from the applicant on:

- (a) Description and size of the facility;
- (b) Summary of completed environmental impact statements;
- (c) Identification of a preferred site;
- (d) Description of merits and detriments to the site;
- (e) Description of mitigative measures taken to minimize all adverse impacts from location, construction and operation of the proposed site; and
- (f) Other information relevant to the application.

61-1606. Council to receive applications -- Prior notice of applicant intent. (1) The applicant shall notify the council of its intent to file an application, which notice shall be submitted sixty (60) days prior to submission of the application.

(2) The applicant shall notify the local city and county governments with jurisdiction over the proposed site sixty (60) days prior to submitting an application to the council.

61-1607. Council to receive applications -- Fees or charges for application processing or certification monitoring. (1) The council shall receive all applications for energy facility site certification. The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:

- (a) A fee of one hundred thousand dollars (\$100,000) for each proposed site, which is not an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code, to be applied toward the cost of the independent consultant study authorized in this subsection (1)(a), shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council. The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant; provided, that said costs exceeding a total of the one hundred thousand dollars (\$100,000) paid pursuant to this subsection (1)(a) shall be payable subject to the applicant giving prior approval to such excess amount. An applicant may choose not to have the process continue if more moneys are requested for consultants and the application shall be deemed returned to the applicant. The applicant may reapply at a later time.
- (b) Each applicant who is not proposing to build an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code, shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council in processing the application. Such costs shall include, but are not limited to, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application. Each applicant shall, at the time of application submission,

deposit ten thousand dollars (\$10,000), or such lesser amount as may be specified by council rule, to cover costs provided for by this subsection (1)(b). Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit. The council shall submit to each applicant a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level; provided, that such applicant may, at the request of the council, increase the amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(c) Each certificate holder for a facility that is not an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code, shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility. Each certificate holder, within thirty (30) days of execution of the site certification agreement, shall deposit fifty thousand dollars (\$50,000), or such other amount as may be specified by council rule, to cover costs provided for by this subsection (1)(c). Reasonable and necessary costs of the council directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit. The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level; provided, that if the actual, reasonable, and necessary expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(d) The fee for a proposed site for an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code, shall be five thousand dollars (\$5,000). The deposit for the independent consultant for an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code, shall be five thousand dollars (\$5,000) and a certificate holder for an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code, shall deposit five thousand dollars (\$5,000) for reasonable costs for inspection and determination of compliance by the certificate holder. All moneys shall be remitted and accounted for in the same manner as provided in subsection (1)(a), (b) and (c) of this section for sites that are not an alternative energy generation plant as enumerated in section 61-1602(9), Idaho Code.

(2) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty (30) days following receipt of the statement from the council, the council may:

(a) In the case of the applicant, suspend processing of the application until payment is received; or

(b) In the case of a certificate holder, suspend the certification.

(3) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall place the money in the "Energy Facility Evaluation Fund" which is hereby created in the state treasury. Moneys in the energy facility evaluation fund shall be remitted as instructed by the council from the funds submitted and moneys appropriated by the legislature. All such funds shall be subject to audit by the legislative services office. Any unexpended portions thereof shall be returned to the applicant or certificate holder.

61-1608. Expedited processing of applications. (1) Any person required to file an application for certification of an energy facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that:

- (a) The environmental impact of the proposed energy facility;
- (b) The area potentially affected;
- (c) The cost and magnitude of the proposed energy facility; and
- (d) The degree to which the proposed energy facility represents a change in use of the proposed site;

are not significant enough to warrant a full review of the application for certification under the provisions of this chapter.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

- (a) Commission an independent study, notwithstanding the provisions of section 61-1607, Idaho Code; nor
- (b) Hold a proceeding under chapter 52, title 67, Idaho Code, the administrative procedure act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section.

61-1609. Counsel for the environment. After the council has received a site application, the attorney general shall appoint a deputy attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter.

61-1610. Public hearings. (1) The municipal and county governments represented on the council shall hold public hearings within sixty (60) days of receipt of the application to gather information from citizens on impacts to the community, quality of life, economic development and environment.

(2) The information gathered from the public hearings will be submitted by the

council-appointed representative of each body to the council with a recommendation from their local government for or against the application before the council.

(3) The council must determine if the proposed site is consistent and in compliance with county or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the county or city planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(4) Prior to a final decision and certification, a public hearing, conducted as a contested case under chapter 52, title 67, Idaho Code, the administrative procedure act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(5) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

61-1611. Factors to be considered in evaluating applications. The council shall be guided by, but is not limited to, the following consideration, where applicable, to aid in the evaluation of applications:

(1) Available research and investigations relating to the affects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, cultural sites and the environment;

(2) The effects of new energy conversion and transmission technologies and systems designed to minimize adverse environmental effects;

(3) Adverse direct and indirect environmental effects which cannot be avoided should the proposed site be designated;

(4) Alternatives to the proposed site which are developed during the hearing process and which minimize adverse impacts;

(5) Reports and recommendations derived from public hearings held by each city and county government represented on the council;

(6) Irreversible and irretrievable commitments of water and natural resources should the proposed site be approved;

(7) The direct and indirect economic impacts of the proposed facility;

(8) The affect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare or endangered species;

(9) The status of permits required by state and federal agencies, statutes and regulations; and

(10) Problems raised by federal agencies, other state agencies and local entities.

61-1612. Decision -- Report. The council shall report to the governor and the legislature an annual review of its decisions as to the approval or rejection of an application for certification within twelve (12) months of receipt by the council of such an application. If the council approves an application for certification, it shall also submit a certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules promulgated thereunder, that are preempted or superseded pursuant to this chapter.

61-1613. Chapter governs and supersedes other law or rules -- Preemption of regulation and certification by state. (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule promulgated thereunder, this chapter shall govern and control and such other law or rule promulgated thereunder shall be deemed superseded for the purposes of this chapter with the exception of the public utilities commission regulation of public utilities pursuant to title 61, Idaho Code.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under section 61-1607, Idaho Code, as now or hereafter amended with the exception of the public utilities commission regulation of public utilities pursuant to title 61, Idaho Code.

61-1614. Effect of certification. (1) Subject to the conditions set forth herein, any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not.

61-1615. Revocation or suspension of certification -- Grounds. Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For failure to obtain all necessary permits required as a condition of siting or by law; or

(4) For violation of the provisions of this chapter, rules issued thereunder or order of the council.

61-1616. Review. (1) A final decision pursuant to section 61-1612, Idaho Code, on an application for certification shall be subject to judicial review by the Idaho supreme court. Petitions for review of such a decision shall be filed in the Idaho supreme court. All petitions for review of a decision under section 61-1612, Idaho Code, shall be by filing a notice of appeal and serving the same in the manner provided by the rules of the supreme court.

The supreme court shall assign the petition for hearing at the earliest possible date, and it shall expedite its review and decision in every way possible.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty (60) days of the commission of such error, or within thirty (30) days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules adopted by the council shall be subject to judicial review pursuant to the

provisions of chapter 52, title 67, Idaho Code.

61-1617. Enforcement of compliance -- Penalties. (1) Whenever the chairman of the council determines that any person is in violation of any provision of this chapter or any rule, permit or order issued or promulgated pursuant to this chapter, the chairman may commence either of the following:

(a) Administrative enforcement action.

(i) Notice. The chairman may commence an administrative enforcement action by issuing a written notice of violation. The notice of violation shall identify the alleged violation with specificity, shall specify each provision of the chapter, rule, regulation, permit or order which has been violated, and shall state the amount of civil penalty claimed for each violation. The notice of violation shall inform the person to whom it is directed of an opportunity to confer with the chairman or the council or the chairman's designee in a compliance conference concerning the alleged violation. A written response may be required within fifteen (15) days of receipt of the notice of violation by the person to whom it is directed.

(ii) Scheduling compliance conference. If a recipient of a notice of violation contacts the council within fifteen (15) days of the receipt of the notice, the recipient shall be entitled to a compliance conference. The conference shall be held within twenty (20) days of the date of receipt of the notice, unless a later date is agreed upon between the parties. If a compliance conference is not requested, the director may proceed with a civil enforcement action as provided in paragraph (b) of this subsection.

(iii) Compliance conference. The compliance conference shall provide an opportunity for the recipient of a notice of violation to explain the circumstances of the alleged violation and, where appropriate, to present a proposal for remedying damage caused by the alleged violation and assuring future compliance.

(iv) Consent order. If the recipient and the chairman of the council agree on a plan to remedy damage caused by the alleged violation and to assure future compliance, they may enter into a consent order formalizing their agreement. The consent order may include a provision providing for payment of any agreed civil penalty.

(v) Effect of consent order. A consent order shall be effective immediately upon signing by both parties and shall preclude any civil enforcement action for the same alleged violation. If a party does not comply with the terms of the consent order, the director may seek and obtain, in any appropriate district court, specific performance of the consent order and such other relief as authorized in this chapter.

(vi) Failure to reach consent order. If the parties cannot reach agreement on a consent order within sixty (60) days after the receipt of the notice of violation or if the recipient does not request a compliance conference as provided in paragraph (a)(ii) of this section, the director may commence and prosecute a civil enforcement action in district court, in accordance with subsection (b) of this section.

(b) Civil enforcement action. The chairman may initiate a civil enforcement action through the attorney general as provided in section 39-109, Idaho Code, as if the council were the department of environmental quality. Civil enforcement actions shall be commenced and prosecuted in the district court in and for the county in which the alleged violation occurred, and may be brought against any person who is alleged to have violated any provision of this chapter or any rule, permit or order which has become

effective pursuant to this chapter. Such action may be brought to compel compliance with any provision of this chapter or with any rule, permit or order promulgated hereunder and for any relief or remedies authorized in this chapter. The chairman of the council shall not be required to initiate or prosecute an administrative action before initiating a civil enforcement action. The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter or any permit issued pursuant to this chapter. The court may assess civil penalties in an amount not less than one thousand dollars (\$1,000) per day nor more than twenty-five thousand dollars (\$25,000) per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any permit issued pursuant to this chapter. The court may charge the expenses of an enforcement action relating to a site certification agreement under this section including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification; provided, that the expenses of a person found not to be in material violation of the provisions of such certification including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Every person who violates the provisions of certificates and permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars (\$5,000) per day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be, and be deemed to be, a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity. The council may, upon written application therefor received within fifteen (15) days after notice imposing any penalty is received by the person incurring the penalty, and when deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the council shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such rules as it may deem proper. Any person incurring any penalty under this section may appeal the same to the council. Such appeals shall be filed within thirty (30) days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the council. When an application for remission or mitigation is made, such appeals shall be filed within thirty (30) days of receipt of notice from the council setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty (30) days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty (30) days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in

whole or in part. If the amount of any penalty is not paid to the council within thirty (30) days after it becomes due and payable, the attorney general, upon the request of the council, shall bring an action in the name of the state of Idaho, or in a court of any county to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as a civil action. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(3) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council.

(4) The remedies and penalties in this section shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person.

61-1618. Availability of information. The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter.

61-1619. Study of potential sites -- Fee -- Disposition of payments. (1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars (\$10,000) for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant; provided, that such costs exceeding a total of ten thousand dollars (\$10,000) shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) All payments required of the potential applicant under this section are to be made to the energy facility evaluation fund. Moneys may be expended from the fund to pay the consultant as instructed by the council. All such funds shall be subject to audit by the legislative services office. Any unexpended portions thereof shall be returned to the potential applicant.

(5) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in this chapter, or change the requirements for disposition of an application for certification as provided in section 61-1612, Idaho Code.

61-1620. city and county requests. Nothing in this chapter shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location.

61-1621. Disposition of receipts from applicants. The state "Energy Facility Evaluation Fund," created in section 61-1607, Idaho Code, shall be credited with all receipts from applicants paid to the state pursuant to this chapter. Such funds shall be used only by the council for the purposes set forth in this chapter. All expenditures shall be authorized by law and shall be made pursuant to appropriation.

SECTION 0.. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 0.. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.